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MONTANA LEGISLATIVE HISTORY

Chapter 52 19 97

Bill H _____ S 56 Original bill & history ✓ C

H. Committee on Busi. + Labor			S. Committee on Business + Industry		
Hearing Date(s)	2/4	✓ C	Hearing Date(s)	1/14	✓ C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

3/31	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/07	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	35	14
	HOUSE		
4/08	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	87	12
	SENATE		
4/09	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 296		
	EFFECTIVE DATE: 04/18/97		

SB 56 INTRODUCED BY LYNCH *LC0424 DRAFTER: CAMPBELL*

REGULATE PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY MAINTAINED CEMETERIES

BY REQUEST OF DEPARTMENT OF COMMERCE

12/26	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FISCAL NOTE RECEIVED		
1/06	FIRST READING		
1/07	FISCAL NOTE PRINTED		
1/14	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	46	0
1/27	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/28	FIRST READING		
1/28	REFERRED TO BUSINESS & LABOR		
2/04	HEARING		
2/05	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	90	10
3/05	3RD READING CONCURRED	88	11
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/10	SIGNED BY SPEAKER		
3/11	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 52		
	EFFECTIVE DATE: 10/01/97		

SB 57 INTRODUCED BY WATERMAN, ET AL. *LC0219 DRAFTER: MARTIN*

REVISE THE CLASSIFICATION, VALUATION, AND TAXATION OF MOTOR VEHICLES

BY REQUEST OF REVENUE OVERSIGHT COMMITTEE

12/27	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO TAXATION		
1/06	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/14	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	48	0
1/31	3RD READING PASSED	46	0

SENATE BILL NO. 56

INTRODUCED BY LYNCH

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102, 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, AND 35-21-713, MCA."

STATEMENT OF INTENT

This bill requires a statement of intent because it requires rulemaking by the board of funeral service. The board shall adopt rules setting forth the information that must be included in an application to establish or expand a cemetery, rules setting forth the information that must be included in an application for a permit for an existing cemetery, rules determining the fee schedules for the permits required by [sections 3 through 16], rules determining the information required to build structures on a cemetery covered by [section 3 through 16], and rules setting forth the information that must be included in the reports submitted to the board by a cemetery company covered under [sections 3 through 16]. Recognizing

the sensitive nature of cemetery services and the potential for abuse to those in need of cemetery services, the legislature considers it necessary to provide guidelines for the operation of for-profit cemeteries. However, protection of the public must be balanced against the right of a business to conduct its affairs in a private manner. All rules promulgated by the board must be narrowly tailored to require only such disclosure as is necessary to effectuate the intent of this legislation without violating the people's constitutional right to know. The intent of this legislation includes ensuring that for-profit cemeteries are operated in a fiscally sound and prudent manner to protect the public's interest in well-maintained cemeteries, both now and in the future.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1853, MCA, is amended to read:

"**2-15-1853. Board of funeral service.** (1) There is a board of funeral service.

(2) The board consists of ~~five~~ six members appointed by the governor with the consent of the senate. Three members must be licensed morticians. One member must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One member must be a representative of a cemetery company governed by [sections 3 through 16].

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-19-101, MCA, is amended to read:

"**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(2) "Board" means the board of funeral service provided for in 2-15-1853.

(3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(4) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

~~(3)~~(5) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(6) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

~~(4)~~(7) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

~~(5)~~(8) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

~~(6)~~(9) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

~~(7)~~(10) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

~~(9)~~(11) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

~~(10)~~(12) "Crematory operator" means the person in charge of the licensed crematory facility.

~~(10)~~(13) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(14) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

~~(11)~~(15) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(12)~~(16) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

~~(13)~~(17) "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) representing to the public that one is a funeral director.

~~(14)~~(18) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

~~(15)~~(19) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(20) "Interment" means any lawful disposition of cremated remains or human remains.

(21) "Lot or grave space" means a space in a cemetery used or intended to be used for interment.

(22) "Mausoleum" means a community-type room or space in a building or structure used or

intended to be used for the interment of human remains in crypts or niches.

~~(16)~~(23) "Mortician" means a person licensed under this chapter to practice mortuary science.

~~(17)~~(24) "Mortuary" means a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing.

~~(18)~~(25) "Mortuary science" means the profession or practice of funeral directing and embalming.

(26) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(27) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

~~(18)~~(28) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

~~(20)~~(29) "Urn" means a receptacle designed to permanently encase the cremated remains."

NEW SECTION. **Section 3. Title.** [Sections 3 through 16] may be referred to as the "Perpetually Maintained Cemeteries Act".

NEW SECTION. **Section 4. Purpose.** The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts.

NEW SECTION. **Section 5. Application of [sections 3 through 16] -- exceptions.** [Sections 3 through 16] apply to all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(1) a church or similar religious organization;

(2) a municipality or county government;

(3) a family, as a private family burial ground where lots are not offered for sale; or

(4) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit.

NEW SECTION. **Section 6. Powers and duties of board.** The board is charged with administering [sections 3 through 16]. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of [sections 3 through 16];

(3) adopt rules and forms to enforce the provisions of [sections 3 through 16];

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for the period of time the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in [sections 3 through 16], including but not limited to contributions not to exceed $1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

NEW SECTION **Section 7. Authority to inspect cemeteries and audit cemetery companies.** (1) The board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery examined or cemetery company audited in accordance with [sections 3 through 16], the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board

in writing that the audit will be prepared.

(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit must be at least equal to the scope of the examination required by the board.

NEW SECTION. **Section 8. Permit -- application.** (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by [sections 3 through 16] must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

(2) A cemetery permit expires on the date set by board rule and may be renewed upon payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone number, who is available to act on behalf of the cemetery company with regard to the requirements of [sections 3 through 16]. A cemetery company may designate a different person with board approval. An application for renewal of a permit must contain:

(a) the name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the telephone number of the cemetery company;

(b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts, niches, and burial rights for which payment has been made in full and the number of certificates or deeds of conveyance issued during the preceding calendar year;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding calendar or fiscal year, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the cemetery company, any change in control of the cemetery company that has occurred during the past fiscal or calendar year, the date of incorporation, if applicable, and the resident agent and address of the registered agent's office if the cemetery company is a corporation; and

(e) any other information that the board requires by rule.

(3) The board may set a penalty fee for late renewal of a permit.

NEW SECTION. **Section 9. Permit -- amendment.** (1) Whenever a cemetery company that is

subject to the provisions of [sections 3 through 16] proposes to amend its present permit for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

NEW SECTION. **Section 10. Permit -- transfer of ownership.** (1) If a cemetery company that is subject to the provisions of [sections 3 through 16] is to be sold, if the ownership is to be otherwise transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

NEW SECTION. **Section 11. Perpetual care and maintenance fund.** (1) A perpetual care and maintenance fund established pursuant to the provisions of [sections 3 through 16] for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or building's, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

(b) documents supporting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and maintenance fund.

(7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpetual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

NEW SECTION. **Section 12. Records required.** (1) A cemetery company shall make and keep accounts and records confirming that it has made the required contributions to its perpetual care and maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

NEW SECTION. **Section 13. Conveyance.** (1) An instrument of conveyance or deed for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance and deeds.

(4) An instrument of conveyance or deed must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance or deed.

NEW SECTION. **Section 14. Preexisting cemeteries.** A cemetery or cemetery company that is in

existence on January 1, 1998, shall obtain the necessary permits required by [sections 3 through 16] in order to continue operation and is subject as of January 1, 1998, to the provisions of [sections 3 through 16].

NEW SECTION. **Section 15. Prearranged funeral plans.** Where applicable, the provisions of Title 72, chapter 37, part 1, apply to persons subject to the provisions of [sections 3 through 16].

NEW SECTION. **Section 16. Penalty -- injunction.** (1) A person who violates a provision of [sections 3 through 16] is guilty of a misdemeanor and upon conviction shall be fined not more than $500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of [sections 3 through 16] by injunction or any other appropriate proceeding.

NEW SECTION. **Section 17. Repealer.** Sections 35-21-101, 35-21-102, 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, and 35-21-713, MCA, are repealed.

NEW SECTION. **Section 18. Codification instruction.** [Sections 3 through 16] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, appl

[sections 3 through 16].

NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0056, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act regulating privately owned, for-profit, perpetually maintained cemeteries; regulating private cemetery perpetual care and maintenance trust funds; adding a sixth member to the Board of Funeral Service.

ASSUMPTIONS:
Ten private for-profit cemeteries will be issued permits.
The sixth board member will be required to attend four one-day board meetings per year and receive per diem of $50 per day and travel expenses at the state approved rates.
Operating expenses of $1,912 in fiscal year 1998 and fiscal year 1999 will be needed for legal fees and court costs, travel, administrative rules, printing and postage.
The increased workload will be absorbed by existing staff.
The periodic audits and examinations will be conducted by existing Professional and Occupational Licensing (POL) audit staff.
An initial permit fee of $170 will be collected from the estimated 10 cemeteries in fiscal year 1998; and in fiscal year 1999 these 10 cemeteries will pay a renewal fee of $170.
One-half of the cemeteries will pay a $100 examination/audit fee in fiscal year 1998 and the other half in fiscal year 1999.

FISCAL IMPACT:
Expenditures:

Department of Commerce POL Bureau:	FY98 Difference	FY99 Difference
Per Diem	200	200
Operating Expenses	1,912	1,912
Total	2,112	2,112
Revenues:		
Funeral Service SSR (02)	2,200	2,200
Net Impact:		
Funeral Service SSR (02)	88	88

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

J.D. LYNCH, PRIMARY SPONSOR DATE

Fiscal Note for SB0056, as introduced

SB 56

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 14, 1997, at 10:00 A.M., in Room 410.

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 56; SB 58; Posted 1-8-97
Executive Action: None

HEARING ON SB 56

Sponsor: **SENATOR JOHN "J.D." LYNCH, SD 19**

Proponents: **ANNIE BARTOS, Department of Commerce**
ARLETTE RANDASH, Eagle Forum
STEVE YERKEL, MT Funeral Directors Association

Opponents: **JOHN EVANS, Owner of private cemetery in Butte**

{Tape: 1; Side: A; Approx. Time Count: 10:00 a.m.; Comments: N/A}

Opening Statement by Sponsor:

SEN. JOHN "J.D." LYNCH, SD 19, Butte presented SB 56. This bill is in response to a number of complaints that occurred not only

in Butte and Anaconda, but also in the Bozeman area as well. Some private cemeteries around the state have not been keeping their cemeteries in a good state of repair. Some cemeteries are doing a good job and they feel they should not be included in this bill. I sympathize with them, but am not sure if there is a way to eliminate it. The Department of Commerce had an enormous number of complaints and looked at what recourse could be taken. Quite frankly, there wasn't. There are the courts and one could sue, but this is costly. I would ask **Ms. Annie Bartos** from the Dept. of Commerce to answer questions on this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:05 a.m.; Comments: N/A}

Proponents' Testimony:

Annie Bartos, Underchief, Legal Council of the Dept. of Commerce. For the record, the Dept. does support HB 56. The Consumer Affairs Office of the DOC had received many complaints relative to cemeteries in the State. I will happy to answer any questions.

Gordon Boe, Bozeman, MT. My mother is buried in the Sunset Cemetery in Bozeman. I took a video of the care of the cemetery. As poorly as it is cared for, it is not necessarily the grass mowed, etc.that is so upsetting, it was that the graves were sinking, the caskets were showing, the headstones are being run over by machinery and destroyed. All they do is give excuses why they cannot take care of the cemetery. I have a video that I took of the cemetery. (The video was shown to the Committee.) This is the Sunset Cemetery between Belgrade and Bozeman. Some holes were 2 to 3 feet deep; old graves have new dirt on top of them; the road has not been paved; grave markers are sunk down into the ground; markers have been run over by backhoe machinery and broken in half; grave markers are missing.

Arlette Randash, Helena, MT. My sister and her family have personally cared for a cemetery in Bozeman on North 7th and I-90. The condition of the cemetery has been very poor. They have mowed the grass for two years.

Steve Yerkel, representing the MT Funeral Directors Association. We stand in strong support of this bill. This may seem unusual, since we are not in favor of over-regulation. There are two concerns of this bill. The first concern is for the families that we serve. The recourse as you can see from **(EXHIBIT 1)** is a long and convoluted process of going through the court system to get some financial remedy. The second concern is the impact that the stories, that you see in your hand, have on the profession of funeral service in the State. Our profession is one, perhaps more than many other, that is absolutely dependent upon the credibility that is placed in us by the families that we serve. We feel there is a need to be addressed. There seems to be no provision for private cemeteries that hold them accountable such as licensing, certification process and continuing education.

Opponents' Testimony:

John Evans, Butte and owner of a private cemetery in Butte. I sympathize with what we have seen here on the screen and what has been said. But I can assure you that that is not the case with our cemetery. We take very good care of our cemetery. And I am sure that there are other private cemeteries that feel and do as we. We oppose the bill mostly from the standpoint that there are regulations in place right now that have not been enforced. If they had been enforced, this situation might not be in existence. If the new regulations are put in place, they will be very costly from an auditing standpoint, from a licensing standpoint, etc. From our perspective, private cemeteries are not money-making entities. If we have to withstand more costs, we are going to be in a position of not being able to provide the services that we do now. For these reasons we oppose this bill.

Informational Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 10:16 a.m.; Comments: N/A}

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **Mr. Evans** to give a ballpark figure on what it costs for a plot in a cemetery. **Mr. Evans** replied that in their cemetery it costs $250.

SEN. BENEDICT asked **Mr. Evans** another question concerning the 15% to be set aside in the bill and how much would that would impact his business in terms of monetary dollars. **Mr. Evans** felt that it would not be very much. You might be looking at 7% on 15% of $250 per year.

SEN. C.A. CASEY EMERSON had a question for **Mr. Evans.** He asked if **Mr. Evans** could give a short summation on the regulations that are in the old law but have not been enforced. **Mr. Evans** said that the permanent care and trust fund is in place where 15% has to be added to the fund on every plot that is sold. The books are open for inspection.

CHAIRMAN JOHN HERTEL asked **Mr. Evans** if he worked under someone else for the cemetery. **Mr. Evans** said that he and his wife own and operate the cemetery and also have a trust fund which they administer.

SEN. BEA MCCARTHY asked **Mr. Evans** if this private ownership is unusual. **Mr. Evans** replied there are two privately owned cemeteries in Butte. He does not know about the rest of the State. Churches and lodges do own cemeteries which would be private.

SEN. EMERSON asked **Mr. Evans** if the county attorney would handle a complaint against him. **Mr. Evans** did not know who enforces the regulations.

SEN. BENEDICT asked **Annie Bartos** what are all the repealers in this bill. She reported that the repealers are under Title 35, Chapter 21, Part 101 all the way through 713 and are the old archaic laws concerning mausoleums. They are essentially outdated. They have not been enforced in regard to the mausoleums either. **SEN. BENEDICT** then asked about the permit application under Section 8, it didn't mention a fee, and wondered if she had an idea of what this fee will be? **Ms. Bartos** said there was a fiscal note that was prepared and it does indicate that the initial permit fee will be $170 for the first year and then each year thereafter there will be a renewal fee of $170.

SEN. MCCARTHY asked **Ms. Bartos** if there were any provisions in the bill that would be retroactive in order to address the cemeteries that were evidently not keeping their part of the contract. **Ms. Bartos** replied that in the present law there are ways that can be used in order to assist Montana consumers. The Dept. of Commerce is relying upon the Consumer Protection Act in those complaints which consumers have filed with the Department that pertain to individual plots for graves. In regard to the way cemeteries have been maintained, no state agency has authority to force these cemeteries to maintain the cemeteries.

SEN. WILLIAM CRISMORE asked **Ms. Bartos** if this bill will address the situation that created the need for drafting SB 56. **Ms. Bartos** replied yes, it does take care of the problem.

SEN. BENEDICT asked **Ms. Bartos** two questions: Is it correct that the perpetual maintenance fund is something that has never been in statute before, requiring private cemeteries to have a perpetual maintenance fund with 15% of their total sales? **Ms. Bartos** answered that she believed that that was correct. I would like to check Title 35. **SEN. BENEDICT'S** second question was: Does the Board of Funeral Directors through the Department have the ability to require an audit and how much would that audit be? **Ms. Bartos** replied that she would like to defer that question to the secretary of the Board of Funeral Directors. **Cheryl Smith** answered: I am the Board Administrator for the Board of Funeral Services. We anticipate that since we do have an auditor on staff, if the cemetery has not had an independent audit done, we could use staff personnel to perform the audit. **SEN. BENEDICT** interrupted and clarified his question. He wanted to know what it would cost the cemetery for this audit and how often would the Board inspect the cemeteries concerning audits. **Ms. Smith** answered that they anticipate auditing half of the cemeteries the first year and half the second year. The cemetery would pay $100 audit examination fee. This is in addition to their annual licensing fee.

SEN. EMERSON asked **Mr. Evans** if he had not already set aside the 15% and that was it not already on the books. **Mr. Evans** replied yes. **SEN. EMERSON** responded that this seemed to be a different answer and wondered if someone could clear up this contradiction.

Ms. Bartos stated that the perpetual fund has existed in statute but that it pertains only to the county and municipal cemeteries with no provisions for privately owned cemeteries.

SEN. BENEDICT asked **Ms. Bartos** what the fees and fines would be to the operators who do not comply with the law. **Ms. Bartos** read, under Section 16, what the penalties would be.

SEN. MCCARTHY continued with that line of questioning and wanted to know what happens to cemeteries that have long ago been pre-sold. **Ms. Bartos** replied that this law will become effective in 1998 and will require cemeteries to obtain their certificates or permits through the Board in 1998. Therefore, the problems that exist with the cemetery at that time would have to be corrected before they could obtain their permit.

SEN. BENEDICT asked **SENATOR LYNCH** if that this bill was not basically a tax--this 15% would be a tax on consumers when they purchase a plot. **SEN. LYNCH** didn't feel that it was an additional tax.

{Tape: 1; Side: A; Approx. Time Count: 10:35 am; Comments: N/A.}

Closing by Sponsor:

SEN. LYNCH thanked the committee for a good hearing. He feels that there needs to be a law on the 15%. There seems to be a problem that exists and this problem needs legislation. **SEN. LYNCH** offered the possibility that those cemetery owners who keep their cemeteries in good condition and receive no complaints might somehow be exempt from the fees until they should receive complaints.

CHAIRMAN HERTEL asked **SEN. LYNCH** if he would be willing to work on an amendment to address this situation. **SEN. LYNCH** suggested that **Ms. Bartos** through the Department of Commerce might be able to work this up and that he would be amenable to that.

HEARING ON SB 58

{Tape: 1; Side: A; Approx. Time Count: 10:42 am; Comments: N/A}

Sponsor: SENATOR CHARLES "CHUCK" SWYSGOOD, SD. 17, Dillon

Proponents: TARA MELE, Montana Public Interest Research Group
ARLETTE RANDASH, Eagle Forum

Opponents: BOB PYFER, MT Credit Unions League
GEORGE BENNETT, MT Brokers Association
JOHN CADBY, MT Bankers Association
BRAD GRIFFIN, MT Retail Association

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in the winter months.

District trustees have been trying without luck to either lease land from the Forest Service or buy property for a fire station. Privately-owned land costs between $45,000 and $75,000 per acre and is too expensive for the district to afford, Border added.

Another problem that keeps

Ca NO. 714 per P. 1/13 rs will be billed for fire protection at the lower rate paid by the far greater number of residents of the Gateway district.

Storm Castle will be generating about $2,500 annually in property taxes for fire protection compared with the $32,500 paid by residents of the Gateway district, Blackman said.

Friday, Jan 3, 97

EXHIBIT 2
DATE 2/4/97
HB HB 56

Cemetery sued over maintenance of graves

By TOM LUTEY
Chronicle Staff Writer

More than a dozen local residents are suing Sunset Memorial Park for not maintaining their loved ones' burial plots.

Filed Monday, the suit faults owners of the cemetery three miles west of Bozeman for not caring for graves.

The maintenance should already be paid for through a perpetual care trust established for the cemetery in 1954, according to James Johnstone, attorney for the plaintiffs. The trust agreement, included with the suit, provides that Sunset Memorial Park will collect the interest income from the fund and use it solely for cemetery care.

That hasn't been the case, the plaintiffs contend.

Carol Code, one of 14 people taking the cemetery to task, was so disgusted with the condition of her husband's grave that she paid $1,000 to move him to another cemetery in 1994.

Code said earlier that on one occasion she found loose dirt covering her husband's plot and headstone. Tire tracks trailed across his grave another time.

Plaintiff Gerald Brown accuses the cemetery of not placing a headstone on the grave of his wife, Fern Brown, even though Sunset Memorial Park cashed the check Brown's granddaughter gave them for the landmark. Brown filed a separate suit against the cemetery Monday, accusing Sunset Memorial Park of breach of contract.

The cemetery's owner, Morgan Welch, did not respond to requests for an interview. Welch lives and Butte and also owns the cemetery there.

Last summer, Welch told reporters for the Montana Standard in Butte that he was taking steps to maintain the Butte cemetery, which has also gathered complaints.

Johnstone is asking that Welch be ordered to reveal how the trust money is spent.

Monday's lawsuits come four months after Gallatin County District Judge Thomas Olson awarded Mae Keil $6,900 to pay for moving her husband's remains out of Sunset Memorial.

Tough dealing with cemetery

In December of 1978 we purchased a complete burial package for my husband and myself at Sunset Memorial Park thinking we would have a beautiful place to rest at peace when the time came.

My husband passed away in January 1995. I assumed his marker would be on the grave for Memorial Day 1995. When it wasn't I went to the office and got the royal run-around, all sorts of excuses (like) we haven't completed the 94's yet but hope to get started on 95's by August. At Christmas time 1995 out-of-town family wanted to visit the grave and see the marker, none!

I went to the office in January 1996 and they couldn't even find our file! When they finally found it, stuffed back in a drawer, I up-graded the marker and was promised it would be there in April. It wasn't but (was promised) for Memorial Day. My daughter and I went out May 27 , still no marker. Finally on May 30 it was there but the name was mis-spelled and one of the emblems was missing. It was then re-ordered to be here in eight weeks. Well, you guessed it. Still no marker! Time after time we went to the office or called and no one was there. I even left a note in the mailbox. We also asked for grass to be seeded and were told it was, this was also in 1995. Does this (photo enclosed) look like grass has been planted? This was taken in May 1996.

What can we do to get our cemetery like it should be? Is this too much to expect, a beautiful garden where we can be proud to put our loved ones to rest.

Myrtle Gamroth
1633 Whitman
Butte

STANDARD
SEPT 21, 1996

Closer scrutiny of cemetery a possibility WED SEPT 8, 1996

By Jennifer Hieger
of The Montana Standard

Complaints about the conditions at a handful of cemeteries, including Sunset Memorial Park just outside of Butte, have raised the possibility that the state will make it tougher for operators to neglect their duties.

The idea has surfaced that the state Board of Funeral Service, an arm of the Department of Commerce, should start overseeing cemeteries. Currently, no single entity has that power, said Doug Lowry, chairman of the board.

"It's going to be a big job. We don't really want to have to do it, but the consumers really need some protection," Lowry said.

The concept, which Lowry said is in its infancy, would need the approval of the state Legislature. The state Department of Commerce included such a measure in a legislative package it sent to Gov. Marc Racicot, but he has withheld his support.

In the case of Sunset Memorial Park, customers, in the last year, have lodged more than 20 complaints at the Butte-Silver Bow County Attorney's Office. The charges center largely on matters of upkeep – dead grass, broken headstones and the like.

Carlo Canty, deputy county attorney, said his office has tried to help by writing letters of inquiry to the cemetery. But because the problems appear to be civil, not criminal, Canty said, "There's not much we can

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Cemetery . . .

do."

There have been virtually no complaints about other local cemeteries, he said.

It would be great, Canty said, if someone had the authority to monitor cemeteries.

The state Consumer Affairs Office also has received a rash of complaints – roughly 20 – about Sunset Memorial Park near Butte and Sunset Memorial Park near Bozeman. Both are run by Butte resident Morgan Welch.

Annie Bartos, office administrator, said her office doesn't have the authority or expertise to regulate cemeteries. It only can respond to problems on a complaint-by-complaint basis, Bartos said.

Most of the complaints sent to the Consumer Affairs Office have been resolved. But, Bartos said, "The department feels he (Welch) could have acted faster."

If the Board of Funeral Service monitored cemeteries, consumers who run into problems would have another avenue to get help, Bartos said.

Welch, who has run the Butte Sunset Memorial Park for nearly 20 years, isn't so sure the idea is a good one.

"It's like the farmer hiring the fox to watch the chicken house ... They (the Board of Funeral Service) want control," Welch said.

"I want to be upfront, fair. I'm not going anywhere. I've been out there (at the cemetery near Butte) day and night," he said.

Welch has said he is working hard to make his cemetery the very best.

At Mountain View Cemetery off Harrison Avenue, owner Gaye Evans said she wouldn't mind if the government took a closer look at how she does business. Evans and her husband have run the cemetery, which was passed down from her grandfather, for five years.

"We're honest, we're open," Evans said. "We feel good about how we treat people."

Jim Axelson, owner of Wayrynen- Richards Funeral Home in Butte, also approves of the idea of having a government entity oversee cemeteries. Locally, Wayrynen-Richards works with five cemeteries. When something goes wrong at a cemetery, Axelson said he feels terrible.

"But because we don't control the cemetery, we're caught," Axelson said.

Most cemeteries, he added, are reputable.

Most states have some sort of board that governs cemeteries, said Steve Morgan, chief operating officer of the International Cemetery and Funeral Association. The group has about 4,300 members.

"In any given state, there's enough laws on the books. The problem is enforcement," Morgan said.

DEIRDRE EITEL/CHRONICLE

"It was a beautiful place when it opened," says Iva Matthews who has complained about the condition of Sunset Memorial Park located between Bozeman and Belgrade. The central statue, which is in poor repair and is filled with thistles, used to hold flowers.

Chorus of complaints

Families of deceased say Sunset Park offers poor resting place

By JOAN HAINES
Chronicle Staff Writer

Carole Code was so disgusted with the condition of her husband's Sunset Memorial Park grave in 1994 she paid $1,000 to have him moved to another cemetery.

She's not alone. On Thursday, Gallatin County District Court Judge Thomas Olson awarded Mae Keil $6,900 to pay for moving her husband's remains out of Sunset Memorial, to cover the cost of a new headstone and for emotional distress.

Code once found her husband's gravestone and burial plot covered with loose dirt. Another time she discovered tire tracks across his plot.

The events were part of a 20-year pattern, Code says, of Sunset Memorial Park's sloppy maintenance of her husband's grave. Thomas Code's body was moved to the veteran's section of Sunset Hills Cemetery near Lindley Park.

The recent events are part of a continuing chorus of complaints that have arisen over the cemetery on Highway 10 between Bozeman and Belgrade. Disgruntled customers say the cemetery fails to install headstones in a timely manner, doesn't water graves and doesn't return phone calls to deal with complaints.

Jim Mitchell, owner of Dokken-Nelson Funeral Service in Bozeman, said he is continually hearing about problems at Sunset Memorial Park.

"I have been getting deluged with people complaining about the upkeep of the cemetery and failure to get monuments installed in a proper length of time," Mitchell said. "A lot of clients are mine. I hate to see them treated this way.

"It's been an ongoing thing for a number of years. It seems to me it's continually getting worse."

The cemetery's owner, Morgan Welch, would not agree to an interview with the Chronicle for this story. Welch lives in Butte and owns another cemetery there. In a recent interview with the Montana Standard in Butte about similar complaints over the cemetery he owns there, Welch said he's taken steps to improve cemetery operations. He said he hired a new manager and is working to make his Butte cemetery "the very best."

(More on **Cemetery**, page 8)

Cemetery/ *from page 1*

But it may be difficult to smooth over the bad feelings of the Sunset Memorial Park critics.

"It was a beautiful place when it opened," said Iva Matthews of Bozeman. "I think the deal is they've got the money and they don't give a damn."

The 71-year-old Bozeman native, former waitress and baker at the old Pine Cafe in downtown Bozeman, is angry because she's had to work hard this summer merely to get her late husband's grave watered at Sunset Memorial.

The grass wasn't watered at Sunset Memorial from May 27, until August, when a caretaker was hired full-time, she said. Even the thistles at the cemetery have dried up.

Iva's late husband, Merle, as well as her sister, mother-in-law and father-in-law are buried in Sunset Memorial. Her family paid $390 for six plots at the cemetery in 1960. The cost of the plots, two cement vaults and a double headstone for Iva and her husband brought the package to $1,200.

Matthews is still dealing with Sunset Memorial Park, but even though Code is not, the reburial of her husband wasn't easy. It was just like going through another funeral, she said.

After her husband's body was moved, she filed a claim to cover her costs in small claims court, which found in her favor. But she hasn't collected any money yet.

Others have voiced their dissatisfaction with Sunset Memorial Park.

The Business and Consumers Bureau of Montana, a private-sector agency located in Bozeman, has received some 20 complaints within the past year and a half about the way Sunset Memorial is being managed, said Myles Eaton, the agency's director.

The Consumer Affairs Office in the state Department of Commerce has received about 21 complaints about Welch's cemeteries in Bozeman and Butte.

"At times I'm frustrated that we're continually receiving complaints," said Annie Bartos, chief legal counsel for the Department of Commerce and administrator for the Consumer Affairs Office. "It's a recurring problem."

Complaints have been about markers not placed on graves, misspelled names and dates on headstones and lack of upkeep, Bartos said.

An attorney from the Department of Commerce visited the Butte cemetery this year to make an on-site inspection and talk with owner Welch about complaints. Most have been resolved; about six are pending, awaiting a response from Welch, Bartos said.

Things are looking up now at Sunset Memorial Park, according to John Thompson of Manhattan, who was hired to be a full-time caretaker this summer.

He cuts and waters the grass, Thompson said Wednesday. Initially he said he had been hired Aug. 1— later he said he was hired in June.

This week, it appeared the grass had been cut throughout the cemetery. It is green in much of it; yellow in places.

Thompson acknowledged the grass was dried up in some areas — the places where he hasn't been able to string hoses.

"This and the Butte cemetery share sprinklers," Thompson said. He keeps three sprinklers at the Bozeman cemetery. "The sprinkler system isn't up to par," Thompson said. "They're going to update."

Two headstones rested against a garage Wednesday. Thompson said he'd place them on the proper graves as soon as he learns where they're supposed to go. Bricks are out of place at the base of a statue of Jesus Christ. A rock pile is standing at one location.

Thompson said he knows some people are angry about the way their plots look, but he believes he can change that.

"I like this type of work," said Thompson, whose grandmother, grandfather, uncle and wife's father are buried at Sunset Memorial. "I'm trying to make everybody happy."

That may be a challenge.

An employee of Welch's cemetery in Butte helped resolve problems in 1995, but no one has tried to get answers to difficulties this year, Eaton said. Welch has not returned his phone messages. One worker at Welch's Butte office said he'd call back, but never did.

The state Board of Funeral Directors submitted a proposed bill to Gov. Marc Racicot's office asking the 1997 Legislature to pass a law regulating private cemeteries. However, Racicot has withheld his support for the measure, according to Bartos.

Matthews would like to see such a law passed. She urges people who feel as she does to contact their state legislators and ask them to introduce such a bill. Or to call Racicot at 444-3111 or the Board of Funeral Service, 444-5433, in Helena.

One of the vanishing fire lookouts likes life on top o

8/25/96

The Montana Standard

Grave concerns

Residents decry conditions at local cemetery

GRASS covering a grave at Sunset Memorial Cemetery shows its state of disrepair.

By Jennifer Hieger
of The Montana Standard

In the spring of 1955, Vernon Grant paid $448.50 for six spaces at Sunset Memorial Cemetery, which sits on a pretty little hill several miles west of Butte.

Grant's idea was that his family, his wife Marie and three children (in those days, spaces were sold in two's), one day would be buried side by side. In 1985, Marie was buried in the first gravesite. Grant's vision, however, of a picturesque resting place for his wife has yet to materialize.

On a recent walk around the cemetery, Grant, now 87, and his daughter Shirley Vigus pointed out the sources of their unhappiness: headstones overgrown with grass, graves topped with dead, yellowish sod, a brick wall left to crumble. The cemetery, they feel, is a disgrace.

About every two weeks, Vigus, 45, takes fresh flowers to her mother's grave. She also handles the basic upkeep, digging weeds and trimming around Marie's headstone. A few months ago, Vigus noticed tire track's over the grave.

"Everytime we walk out of there, he (Grant) has tears in his eyes," Vigus said.

Grant and Vigus are not alone. When the Montana Standard printed Vigus' complaints in its Our Readers Speak column, nearly 20 other area residents called her to share similar stories. They said Sunset Memorial Park has treated their wives, husbands, mothers,

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Cemetery . . .

fathers and children with shocking disrespect.

Some bought spaces at the private cemetery years ago, and are resigned to burial there.

Bertie Queer spent a recent afternoon talking with those who contacted Vigus. She has three generations of her family at Sunset Memorial Park. In the space of five years, she buried her husband, son and grandson there.

"You want a nice place for your family ... (But) you just feel like you took them out in an old field and buried them," Queer, 71, told the group, which had crowded into Vigus' living room.

As they talked, they passed around photographs of the cemetery – their evidence of neglect. Many had the contracts they'd signed years ago, and pointed to the documents' promises of perpetual care.

Ted Selon, whose parents are buried at the cemetery, couldn't attend the gathering, but voiced equal dismay in a conversation later that night.

During a visit to his parents' graves last month, Selon, 46, said he too spotted tire tracks across the headstone, which had been pushed, on one end, out of the ground. The silk flowers he'd left on Memorial Day were gone.

"It hurt. I'll tell you, it really hurt, " said Selon, who also criticized the cemetery in a letter to the newspaper. "I took that very personally."

Sunset Memorial Park, the object of all the bruised feelings, sits not far from Fairmont Hot Springs Resort, amidst green fields and rocky, yellow hills. It is modest in size, but has room to grow. So far, about 5,000 spaces, of a possible 20,000, have been sold.

For the last nearly 20 years, Butte resident Morgan Welch has been president of Sunset Memorial Park of Butte Inc., which has an office on Dewey Boulevard. Welch, 62, entered the cemetery business in Indiana in 1954, the same year Sunset Memorial Park opened.

Touring the cemetery grounds on a recent afternoon – as a crew was busy mowing its lawn and trimming its hedges – Welch acknowledged that some people have legitimate grievances.

"It's terrible, terrible to have a complaint. The only thing worse is to have a complaint and not do anything about it," Welch said.

Welch pointed out evidence of his good-faith efforts: freshly-seeded graves, new cherry trees, clean flower beds. This summer, Welch said, he got rid of some employees who had slacked off, and hired a new manager.

"If you have a relative buried out here, and the cemetery from the road looks like a beautiful spot, but you go up to where your relative is and it's not what it should be, that's all you see," Welch said.

Welch said he is working to make Sunset Memorial Park "the very best" and has given the cemetery more personal attention since the criticisms began cropping up in the newspaper.

"I think people expect more from us because we're privately owned and they can come in and raise hell with us ... and we want it to be that way," he said.

The cemetery's problems, however, appear to run deeper than appearances. Several court judgements have been entered against Sunset Memorial Park of Butte Inc. and/or Morgan Welch. In one case, a judge ordered the parties (along with a Nebraska company called Sunset Memorial Park Cemetery Inc.) to pay a plaintiff more than $90,000.

Welch said such judgements won't impact the financial health of the cemetery because other legal entities are responsible for making any payments.

For some, any improvements Welch makes at the cemetery will arrive too late.

Don Lyght, for one, has found another place to bury the ashes of his wife Beth, who died in May, just five weeks before the couple's 50th anniversary.

The day after Beth's death, Lyght, 74, drove to Sunset Memorial Park to find the columbarium slot where her ashes, and ultimately his, would be placed. He'd paid $1,695 for the two-urn niche.

"I watched my father age 25 years in five minutes, thinking of leaving her there," said 51-year-old Cheri Plute, Lyght's daughter.

Plute recalled the cemetery's sunken graves, broken headstones, and weed-filled grass. "My impression of the place was that it had been abandoned," she said.

On Aug. 16, Lyght buried Beth's ashes at a cemetery in Deer Lodge.

DOUG LONEMAN/CHRONICLE

Clarence Schroeder, 78, sits by his wife Marie's grave Saturday at the Sunset Memorial Cemetery. Five months after the funeral, the gravestone has not been engraved and only recently has grass been put on the grave site. After 55 years with his wife, Schroeder says he expects the cemetery to take better care of her grave. Another woman, angry with the cemetery, had her parents exhumed and reburied in the city cemetery.

Bitter repose

Bereft families grieve over ill-kept gravesites, unmarked tombstones

By ROXANA HEGEMAN
Chronicle Staff Writer

Nearly five months ago Clarence Schroeder buried his beloved wife, Marie, at Sunset Memorial Park near Belgrade. They had been married 55 years.

Today the 78-year-old Schroeder still can't visit her grave without getting angry. It's been only a week since the privately owned cemetery finally got around to putting grass on the sunken, gravel-covered grave. Her gravestone — installed only after he threatened to sue the company — still hasn't been inscribed, he said.

Their daughter, Rosemary Jacob, flew out here this week from Portland, Oregon to help her father get something done about the grave.

"He has already had one heart attack," she said, adding that every time he gets so irate she worries he is going to have another one.

The elderly couple bought the adjoining graves almost 15 years ago. When Marie Schroeder died this winter, the family paid Sunset Memorial Park $395 for her gravestone.

Jacob also said the cemetery is not well-maintained, noting that other graves put in about the same time still have no grass or gravestones.

Their complaints aren't the only ones. Some people have been waiting more than a year for gravestones for which they have already paid. Some say haven't gotten deeds to grave lots. Others complain about maintenance.

One Colorado woman was so angry that she had the graves of both her parents dug up from Sunset Memorial Park and had their bodies reburied in the Bozeman city cemetery. She told the Chronicle she didn't want to talk about her case because of her plans to sue the private cemetery.

Sunset Memorial Park is an assumed business name for Montana Cemetery Management Inc., according to the state Secretary of State's office. The company has been operating under that name since 1989. Morgan L. Welch of Butte is listed as its president, secretary and treasurer.

Welch could not be reached for comment Friday. His answering service said he was in critical condition following a heart attack Monday.

But Welch has not been answering messages now for a long time — neither from attorneys or from families, said several people contacted for this story.

Dokken-Nelson Funeral Chapel has had several inquiries from families who want to move the grave of a loved one out of Sunset Memorial Park, said mortician Jim Mitchell of Dokken-Nelson Funeral Chapel. Most decide against it because of the more than $1,000 in costs for digging up and reburying a body.

"I have to be honest. I'm concerned," Mitchell said. "It's not a comfortable situation for me."

Although the funeral homes do not have anything to do with the ownership or operation of the cemetery, many of the families whose funerals they handled later come to them with complaints about Sunset Memorial Park.

"We hate seeing them go through this kind of stuff," Mitchell said.

Dokken-Nelson has gotten between 15 and 20 complaints in the past year or two about the cemetery. And Mitchell said he has an unusually thick folder of cemetery lot deeds there which their owners are trying to sell.

He added that he himself has had good relations with them.

Complaints he hears like those of Schroeder are common, he said, adding that people have been waiting more than a year to get gravestones put on unmarked graves there.

Sunset Memorial Park sells their own headstones, which are not purchased from local companies, Mitchell said. Headstones purchased from local companies for graves at the city cemetery are usually installed in one or two months, he said.

Complaints about maintenance of the grounds were especially bad last year, Mitchell said, adding that the recent rain this year has alleviated that situation somewhat.

"It is difficult to have a cemetery well maintained when there isn't anybody there," Mitchell said, adding that someone occasionally drives down from Butte to maintain the Bozeman cemetery grounds.

Among the people who have been trying unsuccessfully for some time to reach Welch is Bozeman attorney Gene Brown, who is representing two families.

"There is nobody to contact and nobody to resolve the complaints," Brown said. "Their phone is not being answered."

One of his cases involves a man who paid for his cemetery lot and has not received a deed to it, he said. In the other case, a family paid for two headstones a year ago and they have not been delivered.

The private cemetery is used heavily by the Belgrade community since it is the closest cemetery they have, Mitchell said.

"We would hate to see that cemetery not succeed and prosper," Mitchell said. "It is needed in the valley."

BUSINESS AND CONSUMERS BUREAU
OF MONTANA, INC.

P.O. Box 1149 • Bozeman, MT 59771-1149
Facsimile: 406-586-3732
Office: 406-586-3736

August 14, 1996

Ms. Cheryl Smith
Montana Board of Funeral Services
P.O.Box 200513
Helena, Montana 59620-0513

Dear Ms. Smith:

Steve Yeakel of the Montana State Funeral Directors Association suggested that I write to you and give you our file data on Sunset Memorial Park of Butte and Bozeman.

We are aware that as of this date your Board has no jurisdiction over private memorial parks, but wish to build data in order to have a bill placed in the legislator to have control over private memorial parks.

At this time this Bureau is working two complaints against Sunset Memorial Park - Bozeman.

(1) Family waiting 2 years for grave marker to be place (paid) spotty grass on grave no watering. New complaint 1st notice to company. (8-12-96)
(2) Family waiting since 12-24-95 for head stone to be place, no sod at grave (we have filed a second notice to them, no response to first request. (6-28-96)

Complaint records.

(3) (9-19-95) Family has given up and did not complete file to Bureau.
(4) (7-6-95) Paid for perpetual care, gophers holes in graves, headstone covered with piles of dirt from other new graves. (20 years of problems)
(5) (6-20-95) Vase missing from grave, grass at gave no watered, unruly care at grave, paid for perpetual care.
(6) (7-17-95) Took two years for head stone to be placed after Bureau acted for consumer. Stone had wrong dates on it, not placed not headstone purchased.
(7) (8-2-95) On 11-93 buried, headstone to be placed fall 94, Veterans section, Bureau action Headstone placed August 30, 1995.
(8) (7-5-95) family has given up did not complete complaint forms.
(9) (5-30-95) Headstone not placed.
(10) (5-30-95) Moving grave from place to another.
(11) (5-31-95) refereed then to see legal person.
(12) (5-30-95) Headstone problems
(13) 5-30-95) Telemarketing problem to consumer in Missoula.
(14) (4-24-95) Legal case DV 92 -696 District Court Gallatin County Burial plots on neighbors property, mobile unit placed on neighbors property, construction a shop

on neighbors property.

(15) (4-3-95) 15 years of harassment over grave site.

(16) (12-12-94) Headstone problem.

The Bureau has a file on each of these complaints and can furnish more detail if you require it to have a bill passed to protect the consumer.

We also have some testimonial letter in our files from families were the problem was solved after the Bureau entered into the problem.

Sincerely,

Myles S. Eaton, Service Representative

cc: Montana State Funeral Directors Association ✓
Helena, Montana

Jim Mitchell, President
Dokken Nelson Funeral Services
Bozeman, MT.

MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 1-14-97

NAME	PRESENT	ABSENT	EXCUSED
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
BEA MC CARTHY	X		
DEBBIE SHEA	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JOHN HERTEL, CHAIRMAN	X		

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on February 4, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 375, HB 364, HB 382, SB 56 (1/29/97)
HB 406, HB 409 (1/31/97)

Executive Action: HB 375; HB 382; SB 56

HEARING ON SB 56

Opening Statement by Sponsor: Senator Lynch, S. D. 19 introduced the bill.
{Tape: 1; Side: 1; Approx. Time Count: 3.0; Comments: None.}

Proponents' Testimony:
Ann Bartos, Chief Council, Dept. of Commerce
{Tape: 1; Side: 1; Approx. Time Count: 5.9; Comments: None.}

Gordon Beau, Bozeman, MT
{Tape: 1; Side: 1; Approx. Time Count: 6.7; Comments: None.}

Dean Whitsell, Montana Funeral Directors, Pres.
{Tape: 1; Side: 1; Approx. Time Count: 10.4; Comments: None.}

Steve Yeakel, Ex. Dir. MT Funeral Home Directors EXHIBIT 2.
{Tape: 1; Side: 1; Approx. Time Count: 11.6; Comments: None.}

Rep. Joe Barnett, H. D. 36
{Tape: 1; Side: 1; Approx. Time Count: 12.4; Comments: None

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:
{Tape: 1; Side: 1; Approx. Time Count: 13.4; Comments: None.}

Closing by Sponsor: Sen. Lynch closed.
{Tape: 1; Side: 1; Approx. Time Count: 21.8; Comments: None.}

HEARING ON HB 364

Opening Statement by Sponsor: Rep. Deb Kottel, H. D. 45 introduced the bill. EXHIBIT 3.
{Tape: 1; Side: 1; Approx. Time Count: 23.0; Comments: None.}

Proponents' Testimony: None.

Opponents' Testimony: Todd Koutz, Missoula, MT. EXHIBIT 4.
{Tape: 1; Side: 1; Approx. Time Count: 40.2; Comments: None.}

Ben Brown, First National Pawn Shop
{Tape: 1; Side: 2; Approx. Time Count: 3.7; Comments: None.}

Tracey Hollingsworth, Butte, MT. EXHIBIT 5 AND 6.
{Tape: 1; Side: 2; Approx. Time Count: 18.6; Comments: None.}

Lee Ash, Cardwell Liquidators and Pawn, Billings, MT
{Tape: 1; Side: 2; Approx. Time Count: 20.8; Comments: None.}

HOUSE STANDING COMMITTEE REPORT

February 4, 1997

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 56** (third reading copy -- blue) **be concurred in.**

Signed: *Bruce Simon, Chair*

Carried by: Rep. Pavlovich

Committee Vote:
Yes 19, No 0.

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HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/4/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2/4/97

BILL NO. SB 56 SPONSOR(S) LYNCH

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Steve Yeakel	Helena	MT Funeral Directors Assn
(P) O I	Dean Whitesitt	Stevensville	" " " "
(P) O I	Rick Funds	MSLA	" " "
(P) O I	Anne Hands	Dept of Pardon	DOC
(P) O I	Gordon Dahl	Helena	Self
P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.